Clause 4.6 Exceptions to development standards: Written Request – Building Height

Demolition of all existing buildings and associated structures and construction of a four (4) storey affordable residential flat building containing fifteen (15) dwellings, basement car parking and associated landscaping, stormwater works, and tree removal.

15 Homebush Road, Strathfield
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Clause 4.6 Exception to Development Standards (Compulsory)
Strathfield Local Environmental Plan 2012

Applicant’s name: Creative Planning Solutions Pty Limited
Site address: 15 Homebush Road, Strathfield
Proposal: Construction of a four (4) storey affordable housing residential flat building comprising of fifteen (15) dwellings, basement car parking, associated landscaping, stormwater works, tree removal, and demolition of existing structure.

1. Name of the applicable planning instrument which specifies the development standard:

Strathfield Local Environmental Plan 2012

The number of the relevant clause therein:

Clause 4.3(2) – Height of buildings

The relevant subclause states:

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map

2. The nature of Development Standard sought to be varied and details of variation:

As outlined above, Clause 4.3(2) of the Strathfield Local Environmental Plan 2012 (SLEP2012) prescribes that a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. As indicated in the SLEP2012 Height of Buildings Map extract below (Figure 1), the maximum building height shown for the subject site on the Height of Buildings Map is 11m.

The proposed development has a maximum building height of 13.15m which exceeds the development standard’s height limit by 2.14m, representing a 19.4% variation. The maximum height exceedance is restricted to the lift overrun, which is centrally located within the roof and is not considered to be perceptible from the streetscape. The apparent height of the building that is perceptible when viewing from the street is the actual roof which exhibits a height of 12.2m or an exceedance of only 1.2m (10.9%), when measuring roof RL against the corresponding ground level of the survey (Figure 2).

The proposed works is for the construction of a four (4) storey affordable housing residential flat building, including one (1) level of basement parking, and comprising fifteenth (15) apartment units, of which four (4) are nominated for affordable housing purposes. The development has been designed in accordance with the provisions of the State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP).

The subject site on which the proposal is located, 15 Homebush Road, Strathfield, is essentially an isolated allotment. In accordance with the zoning provisions of the SLEP2012, the subject
site is the most southern lot zoned R3 Medium Density Residential located on the western side of Homebush Road (Refer to Figure 3). The north adjoining lot is occupied by a twelve (12) unit three (3) level multi-dwelling development with basement car parking.

**Figure 1** – Height of Buildings Map extract from SLEP2012. Maximum building height for the subject site is 11m.
Source: www.legislation.nsw.gov.au

**Figure 2** – South Elevation diagram of the proposed development indicating the extent of height exceedance.
Source: Bechara Chan & Associates, as adapted by CPS
3. Statement on the objective of the standard to be varied as it relates specifically to the subject site and proposal:

Clause 4.3(1) of the SLEP2012 includes the following specific objectives for controlling the height of buildings:

(1) The objectives of this clause are as follows:

(a) to ensure that development is of a height that is generally compatible with or which improves the appearance of the existing area,

(b) to encourage a consolidation pattern that leads to the optimum sustainable capacity height for the area,

(c) to achieve a diversity of small and large development options

4. Explanation as to how the proposal, notwithstanding the non-compliance with the development standard, will achieve the objective of the development standard.

- Objective 1(a) of the development standard outlined in Section 3 is achieved as demonstrated by the following reasons:

To ensure that development is of a height that is generally compatible with or which improves the appearance of the existing area

The height of the proposal is compatible with existing developments in the local area, and the development will result in positive contribution the appearance of the streetscape Homebush Road.
The local area is currently in the stages of urban form and building typology transition from older style town house and low rise apartment building developments to more modern designed three (3) and four (4) storey apartment buildings. This is demonstrated by the recent constructions in the existing area, including:

- A four (4) storey residential flat building with basement car parking constructed at 20 Homebush Road, which is located opposite the subject site;
- A part four (4), part five (5) storey residential flat building subsequently amended to include an additional fifth storey upon the previous four (4) storey residential flat building constructed at 21 Beresford Road. This development further included a variation to the height limit.
- A three (3) storey residential flat building with loft (fourth storey) and basement car parking constructed at 2 Burlington Road. This allotment exhibits a frontage of 15.6m.

The proposed development suitably responds to the transitioning nature of the Homebush Road streetscape and the local area through use of compatible building features, style and a proportionate height.

It is acknowledged that the subject site adjoins lower density residential developments to the south. These residential developments are orientated perpendicularly to the subject site and have a south facing frontage to Abbotsford Road. This means that these allotments adjoin the subject site with their rear setbacks, resulting in a generous building separation distance of 13m-19m to the proposed development. It is noted that a reduced separation is provided at south eastern aspect of the subject building and the adjoining dwelling on 1 Abbotsford Road, however this is the result of the lot being occupied by an additional dwelling within the rear setback area. Nevertheless, careful design considerations have occurred at this portion of the building to ensure the amenity is not impacted, including:

- Orientating all ground floor terrace areas to the northern setback of the building,
- Orientating all POS areas to first, second and third floor units toward the street,
- Use privacy screens along the southern portion of the POS areas for these units, and
- Use of boundary landscape screening.

The perpendicular orientation of the south adjoining detached dwellings further acts as an appropriate location for an urban morphological transition. As the south adjoining developments front a different street, Abbotsford Rd, the urban design and building morphology predominantly comprising detached low-density dwellings, will be unaffected by the proposal. Conversely, the amenity afforded by the urban design of Homebush Road at the location of the subject site is already established by the existing medium-density developments located on the eastern side of Homebush Road. In this regard, the proposed development will not result in a contextual contrast between the building heights of the adjoining land use zone, but instead provides for an appropriate urban morphology change as directed by the associated street frontages of Abbotsford Road and Homebush Road (Figure 4).
In considerations of the presence of older brick dominated buildings, the proposed building incorporates face brickwork into the facades of the development and balanced against cement render with variations of pre-cast concrete and timber highlights, to reflect the recent modern developments within the streetscape. The design of the building will contribute positively to the changing streetscape of Homebush Road.

As such, the proposed development with its considered design is compatible with the existing developments in the area whilst responding to the transitioning urban form inherent to the area.

- Objective 1(b) of the development standard outlines in Section 3 is achieved as demonstrated by the following reasons:

  to encourage a consolidation pattern that leads to the optimum sustainable capacity height for the area

The subject site is not afforded with any reasonable opportunities to consolidate with adjoining properties. As illustrated by Figure 4, the only adjoining property that is similarly zoned is already developed to a high potential and is under the ownership of twelve (12) separate strata allotments. In this regard, it is unreasonable to require the subject land to commence proceedings to attempt to acquire adjoining land.

Despite the inability to consolidate, the proposed development has demonstrated that a four (4) storey apartment is an optimum sustainable height for the subject site. The proposed apartment units are afforded with high levels of amenity, with high levels of
solar access and natural cross-ventilation, and being within proximity to the Homebush village centre and Strathfield local centre. Through appropriate design measures, adjoining developments are not unduly impacted by way of visual privacy, noise, or shadow. The streetscape will be improved by the high level of architectural design and as a result of the contextual location of the development within the local area.

- Objective 1(c) of the development standard outlines in Section 3 is achieved as demonstrated by the following reasons:

  to achieve a diversity of small and large development options

The proposed development achieves the objectives of the R3 Medium Residential Density zone as it will provide for a variety of housing comprising of one (1), and two (2) bedroom apartment units, some of which include studies. The proposal also provides four (4) affordable apartment units, which further supports the need of the community wherein there is a general deficiency of affordable housing.

In this regard, the proposal supports the housing needs of the community within the medium density residential environment as further envisaged by the R3 Medium Residential Zone.

5. **Would strict compliance hinder the attainment of the objectives under Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979?**

Yes. The non-compliance with the height of buildings development standard will not have an adverse effect on the locality or surrounding properties. Strict compliance with the development standard in this instance is considered to unnecessary to achieve orderly and economic development of the subject site, and to increase the provision of affordable housing, in accordance with the intentions of the current zoning.

As typically undertaken by Councils, the following assessment of the Clause 4.6 exception to development standards applies the principles arising from the NSW Government Department of Planning and Infrastructure’s guide to varying development standards publication and Hooker Corporation Pty Limited v Hornsby Shire Council (NSWLEC, 2 June 1986, unreported) by using the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46 (6 April 2001) and as reiterated in Wehbe v Pittwater Council (2007) NSW LEC 827, as follows:

- **Is the planning control in question a development standard?**

The maximum height of buildings control is a development standard under the provisions of Clause 4.3 of the SLEP2012. As a result, the proposal seeks an exception to this development standard and as such a written request under Clause 4.6 ‘Exceptions to Development Standards’ has been provided.
- **What is the underlying purpose of the standard?**

Clause 4.3 contains specific objectives for the height of buildings development standard contained within the SLEP 2015 and has been previously addressed above. The relevant parts of Section 5(a) of the EP&A Act are stated inter alia:

(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,

(ii) the promotion and co-ordination of the orderly and economic use and development of land,

(vii) the provision and maintenance of affordable housing,

Accordingly, strict enforcement of the height of buildings development standard in this instance would hinder the desired redevelopment outcome for the site for medium density residential purposes that includes affordable housing opportunities.

- **Is compliance with the standard unreasonable or unnecessary in the circumstance of the case?**

Having regard to the specific objective for the height of buildings development standard provided in Clause 4.3 of the SLEP2012, it is considered that strict compliance with this standard is unnecessary in this case for the following reasons:

- The level of building apparent height exceedance, being 1.2m at the roofline, is not considered to be numerically significant. A 1.2m height exceedance is not capable of accommodating an additional storey.

- The proposal utilises the applicable provisions of the ARH SEPP for an infill affordable residential flat building development. Pursuant to the AHR SEPP the proposal is granted a floor space ratio (FSR) bonus of 0.2:1 on top of the permitted FSR of the SLEP2012. The existing FSR permitted by the SLEP2012 results in a development with three (3) storeys on the subject allotment. The additional gross floor area granted by the ARH SEPP results in the development of a fourth storey.

It is considered that pressures to vary building heights is inherent to developments that utilise the AHR SEPP incentives. Particularly, noting that ‘best practice’ for setting maximum height controls requires the proposed height to be ‘tested’ against the floor space ratio (FSR) applying to the same site., to ensure a viable building envelope is created (refer to Section 2C – Considerations in setting height controls of the Apartment Design Guidelines). Accordingly, when utilising FSR incentives granted to benefit the public good, such as the provision of additional affordable housing, development within the prescribed heights become constrained and the intention for which the incentives are afforded may not be realised under the prescribed height.
The proposed development will support to the contribution of affordable housing as is sought by the objectives and provisions of the ARH SEPP, i.e. ‘(b) to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.’

Land consolidation to enable a viable alternative design is not considered possible for the subject site, due to the site’s context and adjoining land use zoning. The subject site is located to the southern periphery of the R3 medium density zoned area (Figure 3). The only similarly R3 zoned site adjoins the subject site to the north, however consolidation with this site is not realistic as it is already developed for medium density residential development and is under the ownership of twelve (12) separate strata allotments.

Despite the height exceedance, the proposal will not result in any unacceptable impacts to the amenity in the way of visual privacy, noise, and overshadowing to adjoining properties, or the locality more generally.

Appropriate levels of visual privacy and noise impact reduction are afforded through the appropriate siting of the development and with the provision of suitable building separation distances. ADG complying building separation is provided to each adjoining property, aside for the south-east adjoining property occupied by a dual occupancy development. Careful design considerations have occurred at this portion of the building including the orientation of all ground floor terrace areas to the northern setback of the building only and all POS areas to first, second and third floor units being orientated toward the street and use privacy screens along the southern portion of the POS areas for these units. In addition, windows have been sited to avoid opportunity for overlooking into adjoining POS areas for the dwellings.

Whilst it is noted that the additional building height over the maximum does result in some additional overshadowing to adjoining allotments, the level of overshadowing remains acceptable as adjoining developments continue to be afforded with complying levels of usable solar access, being 3 hours between 9am and 3pm in mid-winter.

It should be noted that the submitted shadow diagrams do not accurately illustrate the overshadowing situation as it is limited to a two-dimensional representation. When considering shadows in a three-dimensional aspect, where height is the third dimension, the usable solar access of the private open space areas of adjoining development is much greater than illustrated in the two-dimensional aspect measuring sunlight at ground level. For example, direct sunlight is available at a level plane of 1m above ground level despite the two-dimensional shadow diagrams illustrating a shadow at ground level. The sunlight measured at 1m above ground level is considered to be the usable sunlight as a book could be read in direct sunlight at a table, despite what is represented by the two-dimensional shadow diagram (refer to NSW Department of Planning and Environment’s technical note on quantifying solar access for SEPP 65 requirements).
The proposed development exhibits a high level of architectural merit and will provide for a positive contribution to the streetscape of Homebush Road. The design of the building and the proposed materials has been carefully considered to respect the existing post-war style brick dominated developments apparent in the local area, whilst responding to the transition to more modern developments experienced within the local area.

The proposed height is compatible with the surrounding building forms with heights that are commensurate or greater than the proposed development (see development at 20 Homebush Road, 21 Beresford Road, and 2 Burlington Road).

The subject site is well positioned for a four (4) storey medium density residential development within the local context of the area when considering the existing road pattern and subdivisions pattern. The adjoining low density residential zone occurs to the south of the subject site. These low density residential properties are orientated perpendicularly to that of the subject site and have a south frontage to Abbotsford Road. The subject site however, fronts Homebush Road in a location where medium density developments are already prevalent. In this regard, the proposed development will not result in a contextual contrast between the building heights of the adjoining land use zone, but instead provides for an appropriate urban morphology change as directed by the associated street frontages of Abbotsford Road and Homebush Road.

The visual impact of the proposal when viewing from the low residential density zoned land (i.e. Abbotsford Road) is minimal due to the natural fall of the land, descending from Abbotsford Road towards the subject site.

The proposal results in achieving a high level of internal amenity to the apartments. The siting and location of this development in conjunction with the design of the proposed RFB is conducive to solar penetration, and benefiting from natural cross-flow ventilation. 80% of these areas will benefit a minimum of 3 hours direct sunlight between 9am-3pm in mid-winter solace, and 73% of the apartments are afforded with natural cross-ventilation.

As demonstrated above, the proposal satisfies the objectives of the building height standard under Clause 4.3;

The proposal has been demonstrated to satisfy the objectives of the Strathfield Development Control Plan 2012.

The proposed development is in the interest of the public good, as it provides for additional housing opportunities inclusive of affordable housing units, within an accessible and desirable location.
6. **Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009**

This Clause 4.6 variation also considers relevant principles identified in the following judgements:

- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 (‘Four2Five No 1’)
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 (‘Four2Five No 2’)
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 248 (‘Four2Five No 3’)

The principles that stem from this judgement may be summarised as follows:

a) *The relevant objectives are those stated in the controls not unidentified underlying objectives at [57] in Four2Five No.1;*

b) *That the sufficient environmental planning grounds have to be particular to the circumstances of the proposed development to the site at [60] in Four2Five No. 1; and*

As a result of Four2Five, it is now necessary to demonstrate something more than achieving the objective of the standard. i.e. there are sufficient environmental planning grounds particular to the circumstances of the proposed development to the site.

It is noted that the term *environment* as defined under the EP&A Act includes:

> “all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social groupings”.

Pursuant to Section 79C of the EP&A Act, a matter for consideration for a consent authority in determining a development application is to take into consideration:

(b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality, and*

(e) *the public interest.*

In this regard, the Clause 4.6 written request has demonstrated that the proposal inclusive of the height exceedance will not result in any unacceptable environmental impacts being created to adjoin developments and the local area.

The proposed height is demonstrated to be compatible with existing developments in the area with inherent site features and appropriate design that respects the older lower density developments to the south, whilst responding to the more modern medium density developments occurring in the more immediate area.

Additionally, as stated earlier, the proposal includes affordable housing which is widely acknowledged to provide for a welcomed community benefit within the context of Sydney and more specifically the inner west of Sydney.

Accordingly, the proposal is considered to have sufficient environmental planning grounds to justify the non-compliance with the development standard.